

The Newsletter of the Montgomery County Commission on Common Ownership Communities Millennium 2000

Are You Ready?

From the Chair

We have all been bombarded with Millennium stories of gloom and doom -- everything from interruptions in utility services, to the end of the world, was predicted for when the clock struck midnight on December 31, 1999. Since I am writing this piece before the end of 1999, and it will appear in the January 2000 edition of our Newsletter, I guess I'll stick my neck out and assume a few things.

The world as we know it has continued to function. Sporadic computer-related glitches have occurred. Planes did not fall out of the sky when their onboard clocks turned over to greet the new year. Your mortgage is still the same unless it was adjusted for an escrow shortage or overage. Your car started. Your heat came on, and your credit card bill still arrived with your holiday spending spree duly accounted for.

Assuming I'm correct, many of us are going through an anticipation letdown. So what do we look forward to in 2000, if not a computer related catastrophe? My picks may

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not be as exciting or scary as some other soothsayer's but, nonetheless, these are important issues that I assure you we will be dealing with as members of community associations.

The recommendations of the Stormwater Management Finance Work Group will gain prominence and will be hotly debated. The recommendation of the Work Group, in a nutshell, is to have the County take over the responsibility for all stormwater management facilities that serve more than one property. It would include the conveyance structures (storm drains and piping leading to the stormwater management structure) and the actual stormwater management device -- whether it be a wet pond, dry pond, oil and grit separator, or an infiltration trench.

This recommendation, if ultimately approved, will have far-reaching implications for community associations which presently own and have the responsibility for the hard maintenance of these facilities. How would the County pay for it? Again, in a nutshell, the cost of this move would be charged to all County residents and businesses as a user fee on their tax bill. Please see Craig Wilson's article for a more in-depth look at this important issue.

The Limited Priority Lien Bill will once again be brought before the State legislature for consideration. I have written about this imperative issue before. For those of you who missed it, or need a little refresher -- this Bill will allow a lien (placed on a property for past due assessments) to have a limited priority over the first mortgage in a foreclosure situation.

How limited? \$2,500 or six months worth of assessment, whichever is smaller. Under present law, if a bank forecloses on a property that has had an association lien placed on it for assessments and there are no excess proceeds from the foreclosure sale, the association's lien is wiped out. Priority Lien legislation will give associations some welcome relief in this area.

One last prediction for the year 2000: if your association does not already have a web site, you will consider putting one up by the end of the year. We live in one of the most computer-literate areas of the world and this almost

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instant, twenty-four hour a day access to information is an invaluable communication tool. Some of the many uses include posting contact numbers, board policies, rules, association documents along with architectural guidelines, and posting the hours of pool operation. Many associations have installed interactive features so forms can be downloaded and input on important community issues can be obtained. Often, someone in your community will volunteer to put up a web site and maintain it as a service to the community. The possibilities are endless and the cost to maintain a site has come down dramatically. You can never communicate enough with your community. We are all busy and you need to constantly find creative ways to get your community's attention, no matter how frustrating that task may be at times.

Hope your New Year's was quiet and not disrupted by blackouts or food shortages. By the way, do I have any takers for a nearly new 5000-watt generator and a couple of cases of canned franks and beans?

Peter Kristian

A Very Fond Farewell

We're sad to report that this will be Peter
Kristian's final "From the Chair". A veteran member of the Commission on Common Ownership
Communities, serving as Chair for the last two years,
Peter is leaving to accept the position of general
manager of a large planned community in coastal
South Carolina. Peter also will be missed by thousands of Montgomery Village homeowners, where he
has served for many years, most recently as Executive
Vice President of the Montgomery Village Foundation.

Peter has contributed enormously to the positive growth and development of the Commission's evolving service to the County's community associations. He was one of the organizers and a co-presenter of the Commission's free homeowner reserves seminars. Peter has been a tireless advocate in Annapolis in efforts to enact priority lien legislation, and terms providing for reimbursement of State funds for roadway maintenance. He is well-known in the halls of County government, working to protect the financial health of community associations through greater fairness in taxation, including development of better stormwater management policy. As Commission Chair, Peter volunteered much of his time to meet and speak with many association boards and homeowners regarding community governance.

We literally could fill an entire newsletter with Peter's contributions to our community. We wish him all the best

and much success in his new position. He will be a tremendous asset to his new community. We will miss him.

Questions???Questions???

So many homeowner/condominium association questions and so few answers. So many homeowner/condominium association questions and so few resources to research the answers.

The CCOC has changed all that!!

Homeowners, particularly new homeowners, have many questions regarding their rights as members of homeowner/condominium associations. The CCOC has got the answers. To effectively respond to your questions, and to reach all Montgomery County homeowners, the CCOC has created a brochure just for you --



FAQ's (Frequently Asked Questions)
What New and Existing Homeowners
Should Know About Their

Homeowner/Condominium Association



The FAQ's brochure asks and answers many basic questions such as:

- ? Who can attend association meetings?
- ? When are meetings held?

as well as more intricate questions, such as:

? How can I get a copy of the Maryland laws governing governing homeowner and condo associations?

FAQ 's also answer questions about the CCOC, and describes its role in the community.

This newsletter now will have a new section entitled, "More FAQ's." Periodic updates of the brochure will combine the newsletter's More FAQ's with other questions that are asked of the CCOC during the year.

Even if you think you know all the answers, this is necessary reading! We're very excited about this brochure and copies will be distributed to all county libraries, regional service centers, and registered homeowner and condominium associations.

Do you have any questions about your rights as a homeowner? If you do, please send them to us (our address is on the front of this newsletter), attention: *More FAQ's*. Who knows? You may see them in print.



Arlene Perkins Commissioner

Decisions, Decisions....

One of the CCOC's most important missions is providing alternative means of dispute resolution for

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community associations. Disputes involving issues under the Commission's jurisdiction not resolved by mediation are referred to a 3-person panel, one of whom *must* be from the "resident" category. Cases with the suffix "-O" signify complaints by homeowners; those with "-G" signify complaints filed by "governing" bodies. Abstracts of recent Commission decisions include*:

Case No. 424-0: An HOA Board of Directors demanded a homeowner remove two fruit trees and their containers from the deck behind his townhome. The owner sought approval, which was denied, for container vegetable gardening and dwarf fruit trees on his deck, including eleven polyethylene containers. The denial was based on the Declaration, which required vegetable gardens to be maintained only within the rear yard. Revised requests also were denied. The homeowner eventually placed on his deck four 4'x 4' vessels in which smaller containers with fig trees were placed, and a 4' diameter container for composting.

The HOA demanded removal of the fruit trees, and found the owner in violation of the Declaration, which prohibited erecting or maintaining an exterior addition,

change, or alteration, without approval by the Board, or covenant committee. The Board voted to levy a \$250 fine (which subsequently was vacated) against the owner if the fruit trees were not re-

moved within ten days. The Board's position was based on a "long-standing policy" as to decks, which permitted planting shrubs, small plants and trees which did not exceed 3' above the standard at railing height, and the outdoor planters were no more than 3' in diameter, or 3' x 3'.

The panel held the HOA had not properly enacted rules or regulations. Testimony disclosed "rules" published in earlier newsletters, one limiting planters in front of a house, with height restrictions of in-ground plantings; the second published the same month the complaint was filed.

Decision: The HOA Declaration provides authority to regulate, approve/disapprove changes; requires prior application and approval for landscape modifications and construction of fences, walls, mailboxes or other structures; and limits placement of a vegetable garden in rear yards. The panel disagreed with the interpretation that a deck was not within the rear yard, and found that the Declaration regulated vegetable gardens, not fruit trees. An expert testified that placement of fig trees in pots on a deck is not "landscaping"; therefore, that portion of the Declaration did not apply.

The panel analyzed what was intended by a "structure." Maryland courts have not addressed this issue extensively, but have held an above ground swimming pool was a structure; other states have held fences to be a structure. The Illinois Appellate Court found planters built along the length of a driveway were structures within the context of restrictive

covenants, although these were permanent in nature, contrasted with other planters in the community not attached to anything, and therefore, not considered structures.

Based on testimony and other evidence in the record, the panel held the deck planters were not structures. Architectural change applications may be denied, if the denial is not unreasonable and made in good faith. However, once guidelines are properly issued, the association may not continue to rely on a reasonable and good faith denial basis for turning down similar applications. In this case, the HOA may enact appropriate rules and regulations, but they may not require the owner to remove the existing planters. Once enacted, however, the owner cannot disregard them.

Accordingly, the owner was not be required to remove his fig trees; the planters and other containers on the deck were not items requiring applications for approval.

August 16, 1999



Case No. 430-G: An HOA alleged an owner built a fence without written approval, and sought an order for the owner to modify the fence, conforming to approved styles, or remove it entirely. The owner asserted the fence was approved, and she merely changed the type.

The HOA's Covenants, Conditions and Restrictions (CCRs) require prior Architectural Review Board (ARB) approval to erect any building, fence, wall, or other structure. A Supplementary Declaration for the HOA subdivision prohibited fences, walls, trees, hedges or shrubs obstructing site lines for vehicular traffic, required that fences conform to a "Fence Plan" and be split rail. Subsequent guidelines specified that only split rail fences no higher than 42" would be permitted in front yards; split rail, stockade, or board-on-board fences were permitted for backyards.

The owner submitted a request, and received approval for a deck and split rail fence. However, she began erecting a picket fence with 60" posts, and pickets from 36" to 60". Thereafter, the owner submitted a request to install a picket fence, which was denied as not meeting architectural guidelines. The Association's agent posted a notice on the owner's property that she was proceeding without approval. The owner appealed to the Board, which denied the appeal, and gave her three months to remove the fence. The HOA later adopted further changes to its architectural guidelines to permit specific styles of picket fences in backyards; the owner's picket fence did not meet these requirements.

Decision: The ARB, governed by the CCRs, Supplemental Covenants and Architectural Guidelines, is authorized to approve exterior additions, changes, or alterations. The owner's initial application was approved only for a deck and split rail fence; her construction of a picket fence was without approval. The ARB's denial of a picket fence, affirmed by the Board, was not arbitrary or capricious, and reasonably related to the style of fence permitted to preserve aesthetic harmony. The owner provided insufficient evidence of other fences approved subsequent to developer

^{*}Note: These are abstracts of the cases only. Readers are encouraged to read the entire case for the full context.

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construction. The Guidelines subsequently adopted, approving picket fences, prohibited the style and location of the fence built by the owner.

The owner was ordered to modify her fence to a style, size and material complying with the HOA's revised Guidelines. Prior to making the modifications, a request for approval of same must be submitted.

November 4, 1999



Case No. 444-0: A purchaser of a home (Owner 3) in an HOA filed a formal dispute, seeking to forbid the HOA from requiring removal of a fence at the rear of her property.

Owner 1 originally sought HOA permission to move the rear fence outward to enlarge the yard (for his child), extending it onto common property by 7'. He asserted he received approval, but no longer had the documents; his testimony was uncontradicted.

Owner 2 was unaware the fence encroached on the common property until notified by the HOA, after contracting to sell the home to Owner 3. Seven days before Owner 3's settlement, Owner 2 received a letter from the HOA requesting an application for approval of the fence. It was submitted and denied. The HOA requested the fence be moved off the common property, having confirmed the property line with a professional survey.

The Panel analyzed the facts largely on the basis of whether the parties' conduct supported a claim of adverse possession. However, the encroachment had not continued for the required 20 years. Absent a finding of adverse possession, it could not be argued that ownership of the subject 7' strip of land had changed. The HOA argued its action was against a continuing trespass, and even if Owner 1 had received approval, it was only on a temporary basis.

Decision: Owner 1's claim that he applied for and received approval to move the fence, was found credible. Since Owner 3 was not asserting a claim of exclusive ownership of the 7' strip of land, the Panel found the exclusive use of the land by Owner 3 based on consent, and consistent with the HOA's property rights. Moreover, Owner 3 was held to have a continuing right to fence the enclosed area of common property, as a license for the exclusive use of same had been granted to Owner 1. The license extended for the period during the fence remained structurally sound without external support and major repairs, up to but not exceeding ten years from the date of this decision, following which the license will terminate. The HOA was ordered to file a copy of the Panel's decision in the Montgomery County (Datobree 2064;s1999)

Welcome to the Board of Directors

Why you got on the Board

Either you actively solicited your position or were encouraged by fellow owners and/or Board members to fill an available position. The big question is why. Either you or someone else thinks you can do a better job than the vast majority of your Association members. Several issues that get people on a Board are: careless spending, concern about association fees and/or special assessments, quality or amounts of maintenance, rules & regulations enforcement, or (best of all) a sense of responsibility and the desire to protect your investment.

STEP ONE

Before you do almost anything else, you have to know your job specifications. This information most often is contained in your Declaration and Bylaws. The Bylaws are like the Constitution of the United States or the charter of a municipal government. They precisely define what the Board can, should and can't do in all aspects of association operations. They are difficult (but not impossible) to change or amend, usually requiring 75%-100% approval of the owners. Additionally, study and understand the current rules and regulations. They are similar to laws passed by Congress and the state legislature. They normally are very specific concerning allowable activities by all persons on association property. These can be modified by the Board of Directors. You should also set a good example by following these rules.

STEP TWO

Before you begin to formulate your own agenda for your term on the Board, you should have solid answers to these important questions about your Association:

- ① Where were we before?
- 2 Where are we now?
- 3 Where are we trying to go?
- 4 What are the biggest problems we face?
- (5) Who are the "movers & shakers" on the Board?

Ask other more experienced Board members or your Property Manager for assistance in getting this background information. You may also be able to get a general feeling for the flow of events prior to your arrival by reading the minutes of prior Board meetings. You must understand your yearly budget; what was projected to be spend in each category and where changes might be or have to be made. The more informed you are the more effective you are!

What you must be prepared to do

Sacrifice time. You must attend meetings to be effective. You must read available information before meetings to facilitate the little precious time you have to conduct important business. Make every one of your decisions in the best interest of the association. Do not avoid or delay difficult decisions. This may put you on the opposite side from other Board members, your neighbors, and even your spouse. Learn what is important to the Board and the association (i.e., manicured lawns or maintaining present association fees). Remember that you cannot expect premium

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results on an austerity budget. Be open and honest. Don't be quiet if you disagree with someone on an important decision. Your opinion counts. Your vote counts, and will most likely be recorded for others to review in the future.

In conclusion, you have a thankless job. It helps to get along with people, be impartial, and have a thick skin. Act with integrity and the courage of your convictions. Be flexible in operations and budgets when possible and willing to acknowledge and correct mistakes when necessary.

Art Cyr has been Board President of Southington Manor Condominium Association, in Connecticut, since April 1990. [Reprinted with the author's permission.]

Stormwater Maintenance Financing Study Group -- Update

Since the last Commission newsletter, the Stormwater Maintenance Financing Study Group (SMFSG) has issued its final report on options for financing stormwater management maintenance. After meeting on a pace of almost two meetings per month for about one year, the final report was submitted to the County Executive and Council. Copies are available from the Council Office of Legislative Information Services (240/777-7910).

The final report developed three options/ recommendations as noted in the Commission's last newsletter.

Recommendation

The SMFSG agreed that stormwater facilities maintenance is a basic County-wide service that yields broad public benefits from flood control and stream protection. The current system does not comply with the National Pollutant Discharge Elimination System (NPDES) mandated by State/Federal legislation, risking exposure to substantial fines under the Clean Water Act. Thus, it was recommended that:

- A mandatory, County-wide stormwater district be established with the broadest boundaries possible (attempting to include municipalities, agricultural preserve, federal and state properties).
- A stormwater utility fund be established and funded through a user fee.
- Legislative revisions be made authorizing the County to inspect and maintain stormwater facilities that are located on private property but serve a drainage area broader than a single private property.
- ❖ Facilities turned over to the County must be in good working order (up to the standards to which it was constructed); this will result in costs to community associations to bring their facilities up to standard.
- The "aesthetic" maintenance (e.g. lawn mowing, trash clean-up and the like) would remain the responsibility of the property owners. The result here is that property owners, including community

- associations, will continue to have some expenses related to maintenance.
- The current storm drain tax would be eliminated and storm drain maintenance (currently performed through the Department of Public Works & Transportation) would be incorporated into the new, broader County responsibility.

It is important to understand that the "maintenance" issues addressed by the SMFSG involve, primarily, long-term, capital maintenance intended to keep facilities performing their water quality and quantity control functions. *Ownership* of the stormwater management facilities would, however, remain with the original property owner (*e.g.* community association), who still must maintain insurance on the property. The County must obtain an easement from each property owner to permit entry for maintenance.

Other jurisdictions in the Washington Metropolitan area, and across the country, have been or are currently wrestling with stormwater management financing questions including Price George's County, Maryland, which has implemented an *ad valorem* tax charged to all county property owners, and pays for the maintenance of any stormwater management facility that services an area beyond the private property boundaries of the facility "owner". Prince William County, Virginia has a storm water utility tax.

The report has been formally presented to the Executive and Council, who now have a tool to assist them in developing a solution to this serious issue facing all Montgomery County residents. It now is up to them to begin the process of considering the SMFSG recommendations and determining how, if at all, to implement them.

Several Council members were very receptive to the issues and recommendations contained in the report. Others had many questions; the Executive is proceeding cautiously in his commitment. Interested individuals and groups should obtain a copy of the report, consider it thoroughly; contact the Executive and Council members, and let them know your opinion. Without your direct input, implementation of any solution will move slowly.

Craig F. Wilson, Jr., CMCA[®], AMS[®]
Commissioner

http://co.mo.md.us.CCOC

The Commission on Common Ownership Communities is entering the new millennium on the 'Net. Well, actually, we've been there, but people have had to find us in bits and pieces. We're now bringing it all together through our own home page (on the County's Department of Housing and Community Affairs web site). Be sure to add the above address to your browser's bookmarks (yes, "CCOC" must be in all capital letters). Check back as we add our newsletters, State and County statutes and regulations, FAQ's, and eventually, our

decisions.

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Get Wired! Resources Online



th in using the Internet as a resource has been phenomenal! In addition to our back-page listings of local County offices and telephone numbers, we're adding a standing column of web sites of interest to homeowners in common ownership communities. Unless noted, all web sites use the "www." prefix.

Local Government:

Housing Opportunities Commission hocweb.org Montgomery County Council mo.md.us/council • Phil Andrews phil.andrews@co.mo.md.us • Derick Berlage berlage@co.mo.md.us • Nancy Dacek nancy.dacek@co.mo.md.us • Blair Ewing councilmember.ewing@co.mo.md.us • Betty Ann Krahnke bettyann.krahnke@co.mo.md.us • Isiah Leggett county.council@co.mo.md.us • Marilyn Praisner m.praisner@co.mo.md.us • Steve Silverman Steven.Silverman@co.mo.md.us

Montgomery County Executive

· Michael L. Subin

• Douglas Duncan co.mo.md.us./government/duncan.html

Montgomery County Government co.mo.md.us

- Community Use of Public Facilities cupf@co.mo.md.us
- Department of Environmental Protection

co.mo.md.us/services/dep

michael.subin@co.mo.md.us

• Stormwater Facilities

www.[.....]/dep/DEP/StrmWater/strmfac.html

• Department of Housing & Community Affairs

co.mo.md.us/services/hca

• Division of Consumer Affairs

co.mo.md.us/services/hca/Consumer/consumers.html

• Commiss'n on Common Ownership Communities

co.mo.md.us/CCOC

• Department of Permitting Services

co.mo.md.us/services/permitting

Montgomery County Judicial System co.mo.md.us/judicial

- Circuit Court co.mo.md.us/judicial/circuit/mcccourt.html
- District Court co.mo.md.us/district/mcdcourt.html
- Clerk of the Court Land Records Department

co.mo.md.us/judicial/circuit/services/crtclerk

/landrec/land.html

Montgomery County Library mont.lib.md.us

Montgomery County Planning Board

clark.net/pub/mncppc/montgom/home.htm

State Government:

Maryland Attorney General's Office

Consumer Protection Div. oag.state.md.us/consumer

Maryland General Assembly mlis.state.md.us

Maryland State Government mec.state.md.us/mec

Maryland Secretary of State sos.state.md.us

Maryland Condominium Act

sos.state.md.us/sos/condos/html/condoindex.html

Maryland Statutes

mlis.state.md.us/cgi-win/web_statutes.exe

Municipalities:

Chevy Chase Village ccvillage.com Friendship Heights erols.com.friendshiphtsvillage Gaithersburg ci.gaithersburg.md.us Garrett Park cais.com/garrettpark Olney olneymd.com Poolesville ci.poolesville.md.us Rockville ci.rockville.md.us Takoma Park cityoftakomapark.org

Federal Government:

Federal Communications Commission Telecommunications Act of 1996

fcc.gov/telecom.html

Public Utilities:

Allegheny Power (Potomac Edison) alleghenypower.com
Baltimore Gas & Electric (BG&E) bge.com
Potomac Electric Power Company (PEPCO) pepco.com
Washington Gas washgas.com
Washington Suburban Sanitary Commission (WSSC)

wssc.dst.md.us

Consumer Interest:

Omega Fire Sprinkler Settlement &

Recall Information omegarecall.com

Associations/Organizations:

Community Associations Institute caionline.org
Publications and Peridicals caionline.org/pubs

Community Associations Institute

Washington Metropolitan Chapter caidc.org
Institute of Real Estate Management irem.org
IREM West-Central Maryland Chap. irem92.org

Maryland Homeowners Association

erols.com/maryland homeowners association

Metropolitan Washington Council

of Governments mwcog.org

National Board of Certifications for

Community Association Managers nbccam.org
Regenesis regenesis.net
Rockville Community Network rocknet.org

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Useful County Phone Numbers for Common Ownership Communities

Department of Housing and Community Affairs



Police Department	
Abandoned Autos	(301) 840-2454
Animal Control	(301) 279-1066
Community Outreach	(301) 840-2585
Department of Public Works & Tran	rsportation

(240) 777-7170

Roadway Reimbursement Program
(Division of Highway Services)

Traffic Operations

Trash & Recycling Collection

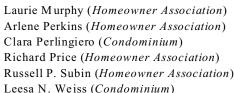
(240) 777-6410



FY'2000 COMMISSION PARTICIPANTS*

COMMISSIONERS:

Residents:



Professionals Associated with Common Ownership Communities:

Robert Goodman (Attorney)
Jay I. Krampf (Lender)
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Michael Maloney, AMS® (Professional Manager)
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(Professional Manager)

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Lee Burstyn (Real Estate Sales)
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Development)
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Richard Alper

DIVISION OF CONSUMER AFFAIRS:

George Rose, *Chief*Evan Johnson, *Administrator*Lisa Brennan, *Investigator*

Do you need additional copies of the *CCOC Communicator*? Call us at (240) 777-3766. Subscriptions to Commission decisions are available, upon request. Call the CCOC for fees.

Does your association need a speaker?

Have Commissioners will travel! If you would like us to visit your association, please call (240) 777-3766.

^{*}As of January 1, 2000.